

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1173 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

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GEB

Versus

.ASMUKH R SHAH .

Appearance:

MR PK PANCHOLI for Petitioner

MR PB MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

Date of decision: 20/04/98

ORAL JUDGEMENT (Per K.G.Balakrishnan,J.)

The respondent herein is having a Hotel at Baroda. The respondent has been using electricity for the purpose of running his Hotel business. The petitioner-Gujarat State Electricity Board has fixed electricity tariff for the said Hotel at commercial rate. Aggrieved by that, the respondent filed Special Civil Suit No.622/92 before the Civil Judge (SD), Baroda and sought for an injunction restraining the petitioner-Board from levying electricity charge at commercial rate. An interim order was passed by the Civil Judge on 15-10-1993. The same is challenged in this Special Civil Application. The interim order passed by the Civil Judge was stayed by the learned Single Judge on 24-2-1995. Thereafter, the petitioner issued notice to the respondent to pay a sum of Rs.1,80,000/- being the arrears of electricity charge along with amount for

delayed payment.

2. The respondent has also filed Civil Application No.3321 of 1998 praying that the Bill issued to him on 24-3-1990 may be stayed and the petitioner in Special Civil Application may be restrained from disconnecting the electricity supply to the respondent.

3. We heard the learned Counsel Mr.P.B. Majmudar for the petitioner and Mr.P.K.Pancholi, the learned Counsel for the respondent. Mr.Majmudar submitted that the dispute between the parties relates as to which tariff shall apply and as per clause 11 of the Tariff For Supply of Electricity, any dispute regarding Tariff is to be decided by the General Manager(Commercial). Clause 11 reads as follows:

"In case any question arises to the applicability of any tariff to any particular class of service or as to the interpretation of various clauses of these tariffs the decision of the General Manager (Commercial) of the Board shall be final and binding."

In view of the aforesaid clause, the respondent submits that the respondent is prepared to withdraw Special Civil Suit No.622 of 1993 pending before the Civil Judge (SD), Baroda and that he may be permitted to agitate the question before the General Manager (Commercial) as per clause 11. The Counsel for the Gujarat Electricity Board fairly agreed to such a course provided the respondent makes substantial payment towards the amount claimed under the demand notice already issued to him.

4. In view of the aforesaid submission, the respondent-Hasmukh R.Shah is directed to file a statement before the Civil Judge (SD), on or before 30th April 1998 Baroda expressing his willingness to withdraw Special Civil Suit No.622 of 1993. The respondent shall pay Rs.98,865/- to the petitioner-Board on or before 30-4-1998. The balance amount, if any, under the Demand Notice, is to be paid after the decision of the General Manager (Commercial). The respondent shall make a Reference Application as per Clause 11 before the General Manager (Commercial) of the respondent Board on or before 30-4-1998 and the General Manager (Commercial) shall dispose of the same within two months thereafter. The payment of Rs.98,865/- is without prejudice to the rights of the respondent as regards the Reference Application to be filed. If the respondent makes payment of Rs.98,865/- on or before 30-4-1998, the petitioner shall

not disconnect the electricity supply provided to the respondent on this count till the decision of the General Manager (Commercial) in the Reference Application to be filed by the respondent. The petition is disposed of accordingly. Rule to that extent is made absolute with no order as to costs.
